A **KATHIRSEAN KUMARASAN**

v.

PUNASWARTHY K SHANMUGAM

B HIGH COURT MALAYA, PULAU PINANG
CHEW SOO HO JC
[DIVORCE PETITION NO: 33-858-10-2011]
1 JUNE 2012

C ***FAMILY LAW:*** *Financial obligation - Car loan - Car bought under wife's name for her sole use - Husband ceasing to pay loan instalment for car after separation - Car repossessed and auctioned - Whether husband to pay outstanding sums due on car loan*

D ***FAMILY LAW:*** *Maintenance - Wife - Whether wife who was gainfully employed could claim for spousal maintenance - Wife's needs - Whether wife entitled to continue standard of living enjoyed during existence of marriage - Whether claim for maintenance allowed*

E The petitioner ('husband') petitioned for the dissolution of his marriage with the respondent ('wife'). The respondent cross-petitioned for the dissolution of their marriage and sought maintenance for herself in the sum of RM2,000 per month, payment of the sum due to Public Bank of RM13,415.21 and overdue interest in respect of a car ('the car') which had been repossessed and auctioned. Dissolution of marriage was mutually agreed to. The evidence showed that the petitioner was drawing F a salary of RM5,000 a month. During their living together, the petitioner had been paying the rental, house utilities, car instalment and petrol which the respondent had to bear on her own since leaving apart. The respondent claimed that she should be placed in a position to enjoy the same standard of living as she had during the subsistence of the G marriage. The respondent was gainfully employed with a salary of RM3,371 per month. As for the car, the petitioner contended that the car was bought in the respondent's name for her sole use. The petitioner further contended that he had been unable to pay the monthly car instalments because he lost his job in 2009.

H **Held:**

(1) It did not mean that when respondent was gainfully employed earning RM3,000+ per month, there should not be any maintenance because she was self-sustainable. The court must look into her I needs, the needs that she has been living in the standard that she had enjoyed or she had been provided during her life together with

the petitioner. For a lady to maintain herself to be presentable within the means is reasonable especially so in this case where it was the petitioner who had encouraged the respondent to be so. The respondent should not therefore be deprived from the position to enjoy the same standard of living as she had enjoyed during the existence of her marriage; *(Koay Cheng Eng v. Linda Herawati Santoso,* (refd)). (para 6)

(2) The petitioner was drawing a salary of RM5,000 a month. There was no clear evidence that his salary was insufficient for himself and to meet some payment of maintenance. Balancing the means and needs of the parties, a sum of RM1,000 as maintenance for the respondent in the standard that she had been living was a fair sum which was well within the means of the petitioner having taken into consideration the fact that the respondent was also gainfully employed and that the petitioner contemplated to remarry. (paras 7 & 8)

(3) A clean break in the sum of RM90,000 was not within the means of the petitioner without any other evidence besides his monthly salary of RM5,000. (para 8)

(4) The petitioner had to pay the respondent maintenance in the sum of RM1,000 a month for a period of four years from the date of order which did not violate the provision of s. 86(3) of the Law Reform (Marriage And Divorce) Act 1976 as it was not more than three years before the institution of the petition. Further, the petitioner had not made any payment at all ever since the respondent was forced to leave the matrimonial home. (para 9)

(5) The judgment obtained by the bank for the outstanding sum was in 2007 and not in 2009. The true intention and reason of the petitioner in not paying the monthly car instalment before the judgment was entered in 2007 was doubtful. It could not be on the account of his alleged unemployment in 2009. There was no reason that he was unable to pay the car instalments. Although the said car was purchased by the petitioner in the name of the respondent, allegedly for her sole use, the petitioner was in fact using the said car most of the time. Even after the respondent was allegedly forced out of the matrimonial home, the petitioner still kept the said car and refused to give it over to the respondent. Since the petitioner had been paying for the car instalments and had continued to be in possession and in use of the said car until it was repossessed by the bank in 2010, it was only just and reasonable that he should

bear the outstanding sum due to the bank which was in fact created by his default. Hence, the petitioner had to pay the outstanding sums due to the bank of RM13,415.21. However, the respondent was liable to pay the interest accrued since she did share the use of the car. (para 10)

Case(s) referred to:
Koay Cheng Eng v. Linda Herawati Santoso [2008] 4 CLJ 105 CA ***(refd)***
Re Borthwick (deceased); Borthwick and Another v. Beauvais and Others [1949] 1 All ER 472 ***(refd)***

Legislation referred to:
Law Reform (Marriage And Divorce) Act 1976, ss. 78, 86(3)

For the petitioner - Thanasekharan Autherapady; M/s A Thanasekharan
For the respondent - Ravin Woodhull (Kiren Ram Kartarram with him); M/s DM Rao & Company

Reported by Amutha Suppayah

JUDGMENT

Chew Soo Ho JC:

[1] The petition of the petitioner (husband) *vide* encl. 1 was for the dissolution of his marriage with the respondent (wife) with no order as to costs. The respondent in her affidavit-in-reply sworn on 10 December 2011, however, cros-petitioned for the dissolution of their marriage based on her grounds as deposed in the same affidavit, payment of her maintenance by the petitioner in the sum of RM2,000 per month, payment of the sum due to Public Bank of RM13,415.21 and overdue interest in respect of a car Honda Accord No. PCY 6930 which had been repossessed and auctioned, *inter alia* and costs of the proceeding. At the commencement of the hearing of this case, both parties had agreed to the dissolution of marriage and agreed that the only issues left to be determined by the court were the maintenance of the respondent (wife) and the payment of the sums due to the Public Bank. After hearing the evidence of the petitioner and the respondent who had respectively testified in the court pertaining to the two issues in dispute on 1 June 2012, I have ordered the petitioner to pay maintenance to the respondent in the sum of RM1,000 a month for a period of four years from the date of this order and to pay the outstanding sum of RM13,415.21 due to Public Bank being the loan granted to buy the Honda Accord Car No. PCY 6930 which was registered in the name of the respondent. I append below my grounds for making the above orders.

Maintenance

[2] *Vide* her witness statement produced and marked as exh. D3, the respondent had listed out the expenses paid to her by the petitioner during their marriage to be RM200 for house rental, RM400 for groceries, RM180 for utilities, RM200 for petrol, RM1,000 for car instalment and RM300 for car servicing totalling RM2,280 per month. After separation, the respondent had purchased another car for which her monthly repayment of the car loan is RM450 per month which will expire in two years ie, by 2014. The respondent added *vide* her oral evidence in the court that before marriage, she was a simple person but after marriage, on the insistence by the petitioner that she had to be presentable, she had to spend her own income for cosmetics, clothing, fitness, perfume and hair salon in the sum of about RM1,000 a month. She prayed that she is to be placed in the same lifestyle as she had been used to during the subsistence of her marriage with the petitioner. Although the respondent is gainfully employed with a salary of RM3,371 per month, she stated that she is just surviving with that income.

[3] The petitioner is earning a salary of RM5,000 per month as a senior administrator. He admitted that during the marriage of both parties, he paid the rental of their matrimonial home in full, utilities in the sum of RM180 per month, groceries of RM400, car (PCY 6930) instalment of RM1,000 per month and petrol bill of RM500. The petitioner's main contention against maintenance for the respondent was that the respondent has earned an income which is sufficient to maintain herself. It was submitted that the RM5,000 earned by the petitioner was not enough for him to run a family since he intends to remarry and that it is unfair to ask the petitioner to pay maintenance again. As to the cosmetics, clothing etc which the respondent is spending, petitioner submitted that the respondent does not need all that.

[4] The respondent submitted that she should be placed in a position to enjoy the same standard of living as she had during the existence of the marriage of RM1,000 a month citing the case of *Koay Cheng Eng v. Linda Herawati Santoso* [2008] 4 CLJ 105. Since the respondent is renting a premises paying rental of RM600 per month, it was submitted that the petitioner should bear half of the rental per month; in addition, half of the petrol which the petitioner had previously been paying ie, in the sum of RM250 as car petrol per month with the same amount for the utilities of RM180 per month be also paid by petitioner. Together with the other expenses, she prayed for RM2,000 of maintenance per month. It was nevertheless further submitted that since there is no child born of the marriage, a clean break in the sum of RM90,000 (being RM1,500 x 5 years) was proposed.

[5] From the evidence before the court, although the respondent is gainfully employed, the mere fact that she could possibly self-sustain with her salary is not a key factor which disentitles her to maintenance. Section 78 of the Law Reform (Marriage And Divorce) Act 1976 ('LRA') provides that in determining the amount of any maintenance, the court shall base its assessment primarily on the means and needs of the parties regardless of the proportion such maintenance bears to the income of the husband but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage. What is maintenance has been well explained by Harman J in the often quoted case of *Re Borthwick (deceased); Borthwick and Another v. Beauvais and Others* [1949] 1 All ER 472 where His Lordship said:

> ... it is said that maintenance is the only thing which can be regarded. That does not mean that the court can only give the dependent just enough to put a little jam on her bread and butter. It has already been held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case ... the wife of a rich man is entitled to better provision for her maintenance than the wife of a poor one. Maintenance does not only mean the food a wife puts in her mouth. It also means her clothes, the house in which she lives, and the money which she is to have in her pocket, all of which vary according to the means of her husband. Maintenance cannot mean only mere subsistence.

[6] It is undoubted that both the petitioner and the respondent are gainfully employed. It does not mean that when the respondent is gainfully employed earning RM3,000+ per month, there should not be any maintenance because she is self sustainable. The court must look into her needs, the needs that she has been living in the standard that she had enjoyed or she had been provided during her life together with the petitioner who had provided for her. Evidence of the respondent shows that she was initially a simple lady but after marriage she had to spend more to upkeep herself as encouraged by the petitioner to be presentable. Hence, I do not find it odd that the respondent needs to continue to do so to maintain herself in that standard of upkeeping herself to use cosmetics, perfumes, going to salons, buying clothings etc to maintain her status. For a lady to maintain herself to be presentable within the means is reasonable especially so in this case where it was the petitioner who had encouraged the respondent to be so. The respondent wife should not therefore be deprived from the position to enjoy the same standard of living as she had been during the existence of her marriage; *Koay Cheng Eng (supra)*.

[7] The petitioner is drawing a salary of RM5,000 a month. Apart from his own expenses, there is no clear evidence that his salary is insufficient for himself and to meet some payment of maintenance. During their living together, undisputed evidence shows that the petitioner had been paying the rental, house utilities, car instalment and petrol for which the respondent will have to bear on her own since leaving apart. The respondent is 46 years old now.

[8] Balancing the means and needs of the parties, I am of the view that a sum of RM1,000 as maintenance for the respondent in the standard that she had been living will be a fair sum which is well within the means of the petitioner having taken into consideration the fact that the respondent is also gainfully employed and that the petitioner contemplates to remarry. I do not find a clean break in the sum of RM90,000 is within the means of the petitioner without any other evidence besides his monthly salary of RM5,000.

[9] Consequently, I order the petitioner to pay the respondent maintenance in the sum of RM1,000 a month for a period four years from the date of order which does not violate the provision of s. 86(3) LRA as it is not more than three years before the institution of the petition which was filed in September 2011. I find it fair to so order because the petitioner had not made any payment at all ever since the respondent was forced to leave the matrimonial home.

Outstanding Car Loan Due To Public Bank Berhad

[10] The petitioner contended that the car was bought in the name of the respondent for her sole use. Thus, she should bear the outstanding sum of RM13,415.21 still due and owing to the said bank and all other interest accrued. The petitioner said in evidence that he was unable to pay the monthly car instalments which he had been paying though it was bought in the name of the respondent because he lost his job in 2009. However, as rightly pointed by learned counsel for the respondent in submission, the judgment obtained by the bank for the outstanding sum was in 2007 and not in 2009. The true intention and reason of the petitioner in not paying the monthly car instalment before the judgment was entered in 2007 is doubtful. It cannot be on account of his alleged unemployment in 2009. The petitioner had shown his EPF return showing that there were no contribution for a few months in 2009 but he had not produced any document prior to 2009 and particularly in the year 2007 to show his financial ability. Hence, whether petitioner was indeed unable to pay the monthly instalment of the said car PCY 6930 in 2007 or before or that he intentionally refused or neglected to pay

the same is best known to himself. Benefit of the doubt should nevertheless be given to the respondent that it was not and could not be due to the petitioner's loss of employment that he did not pay the car instalment resulting in the judgment in favour of the bank. Bereft of any evidence showing otherwise the reasonable inference to be drawn is that the petitioner was gainfully employed before 2009. There is no reason that he was unable to pay the car instalments. From the fact, although the said car was purchased by the petitioner in the name of the respondent allegedly for her sole use, the respondent's evidence showed that petitioner was in fact using the said car most of the time apart from sending the respondent to work etc. The respondent had hardly driven the said car. Even after the respondent was allegedly forced out of the matrimonial home, the petitioner still kept the said car and refused to give it over to the respondent. Since the petitioner had been paying for the car instalments and had continued to be in possession and in use of the said car until it was repossessed by the bank in 2010, it is only just and reasonable that he should bear this outstanding sum due to the bank which was in fact created by his default. In the circumstances, I hold that the petitioner should bear the outstanding sums due to the bank of RM13,415.21 and I so order the petitioner to pay this sum to the respondent. However, despite the petitioner having to pay this sum, it does not relieve the respondent in total as she may still be liable to some interest accrued. Petitioner should not complain as the respondent being the registered owner of the said car may still be liable to pay the interest accrued as she did share the use of the car.

Conclusion

[11] For the foregoing reasons, I order the petitioner to pay maintenance to the respondent in the sum of RM1,000 per month for four years from the date of the order and I further order the petitioner to pay to the respondent the sum of RM13,415.21 being the outstanding car loan due to Public Bank Bhd with costs of this proceeding.